

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

JOSEPH N. SKIPPER,

Plaintiff,

v.

Case No. 2:04-cv-121
HON. ROBERT HOLMES BELL

RANDY OLLIS,

Defendant.

OPINION AND ORDER APPROVING MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATION

The Court has reviewed the Report and Recommendation filed by the United States Magistrate Judge in this action. The Report and Recommendation was duly served on the parties. The Court has received objections from the plaintiff. In accordance with 28 U.S.C. § 636(b)(1), the Court has performed *de novo* consideration of those portions of the Report and Recommendation to which objection has been made. The Court now finds the objections to be without merit.

Plaintiff disagrees with the recommendation to dismiss defendant Ollis. Plaintiff argues that a question of fact exists whether defendant violated plaintiff's Eighth Amendment rights when defendant allegedly made a verbal comment in front of other inmates about plaintiff being involved in assaulting Rosa Parks. Defendant denies making the statement. The statement was allegedly made one time and, under the circumstances, could not have violated plaintiff's constitutional rights. The fact that plaintiff assaulted Rosa Parks, according to most everyone involved in this case, is common knowledge within the prison. The incident was covered in the national media, and talked about by plaintiff, prisoners and staff.

THEREFORE, IT IS ORDERED that the Report and Recommendation of the Magistrate Judge is approved and adopted as the opinion of the court.

The court must next decide whether an appeal of this action would be in good faith within the meaning of 28 U.S.C. § 1915(a)(3). *See McGore v. Wrigglesworth*, 114 F.3d 601, 611 (6th Cir. 1997). For the same reasons that the court grants defendants' motion for summary judgment, the court discerns no good-faith basis for an appeal. Should the plaintiff appeal this decision, the court will assess the \$255 appellate filing fee pursuant to § 1915(b)(1), *see McGore*, 114 F.3d at 610-11, unless plaintiff is barred from proceeding *in forma pauperis*, e.g., by the "three-strikes" rule of § 1915(g). If he is barred, he will be required to pay the \$255 appellate filing fee in one lump sum.

Date: August 30, 2005

/s/ Robert Holmes Bell
ROBERT HOLMES BELL
CHIEF UNITED STATES DISTRICT JUDGE